

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	Case No. 2:08-CR-224-IPJ-TMP
)	
JAMARCY MACON)	

JOINT MOTION TO DISMISS INDICTMENT WITHOUT PREJUDICE

COMES NOW the United States of America, by and through its counsel, Alice H. Martin, United States Attorney for the Northern District of Alabama, and Jeffery A. Brown, Jr., Assistant United States Attorney, and counsel for the defendant, Henry Lagman, and jointly moves the Court to dismiss the indictment without prejudice.

The government charged the defendant with possession of fifteen or more access devices and aggravated identity theft, pursuant to 18 U.S.C. § 1029(a)(3) and 18 U.S.C. § 1028A. The defendant pleaded guilty, was sentenced to thirty-four months to serve, and reported to FPC Pensacola on January 12, 2009. The government has discovered that two circuits, the Fifth and Tenth, have both held that a check account number is not an access device. *U.S. v. Hughey*, 147 F.3d 423 (5th Cir. 1998) and *U.S. v. Tatum*, 518 F.3d 769 (10th Cir. 2008). The

government did not find any cases dealing with this issue from the Eleventh Circuit, but out of an abundance of caution and in the interest of justice, the Government filed a motion to arrest judgement, order a new trial, and/or dismiss indictment on January 14, 2009. The Court signed an order to arrest judgement on January 15, 2009.

The Government and counsel for the defendant, Henry Lagman, now jointly moves the Court to dismiss the indictment without prejudice.

Respectfully submitted this the 3rd day of February, 2009.

ALICE H. MARTIN
United States Attorney

Jeffery A. Brown, Jr.
Assistant United States Attorney

HENRY LAGMAN
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of February 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Henry Lagman

Attorney for the Defendant

Jeffery A. Brown, Jr.

Assistant United States Attorney